

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

# February 8, 2001

DIVISION ONE

B137285 People (Not for Publication)  
v.  
Gutierrez et al.

As to Arias and Padilla, the judgments are affirmed. As to Gutierrez, his conviction of count 3, and the armed principal and acting in concert allegations ancillary thereto (§§ 664, 211, 213, subd. (a)(1)(A), 12022, subd. (a)(1)) are reversed; the judgment is modified by striking the section 12022.53, subdivision (c), and sections 12022.5, subdivision (a)(1), and 12022.53, subdivision (b), enhancements ancillary to counts 7, 8, and 9; as modified, the judgment is otherwise (except for count 3) affirmed; Gutierrez's sentence is modified by striking the sentences imposed on count 3 and on the stricken enhancements (a total of 34 years, 4 months), leaving an aggregate sentence of 52 years; and the cause is remanded to the trial court with directions to enter a corrected abstract of judgment.

Vogel (Miriam A.), J.

We concur: Ortega, Acting P.J.  
Mallano, J.

B141678 People (Not for Publication)  
v.  
Callier

We affirm the judgment.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.  
Mallano, J.

## DIVISION ONE (Continued)

Mallano, J.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.  
Mallano, J.

## February 8, 2001-Continued

## DIVISION ONE (Continued)

[illegible]

The judgment is affirmed.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.  
Mallano, J.

[illegible]

We reverse the judgment. We remand the case to the trial court with instructions to dismiss the case.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.  
Mallano, J.

B137317 People (Not for Publication)  
v.  
Martha

The judgment is affirmed.

Mallano, J.

We concur: Ortega, Acting P.J.  
Vogel (Miriam A.), J.

February 8, 2001-Continued

## DIVISION ONE (Continued)

B128471      Karno      (Not for Publication)  
v.  
Kupetz et al.

We affirm the challenged order. The agents are entitled to their costs on appeal.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.  
Mallano, J.

B138967      Los Angeles County, D.C.F.S.      (Not for Publication)  
v.  
Vassili K.

We affirm the challenged orders.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.  
Mallano, J.

DIVISION TWO

B134637      Fisher      (Not for Publication)  
v.  
Transamerica Financial Services

The order granting a new trial is reversed. In all other respects, the judgment is affirmed. Fisher to recover his costs on appeal from Transamerica.

Boren, P.J.

We concur: Nott, J.  
Cooper, J.

## February 8, 2001-Continued

## DIVISION TWO (Continued)

B134929      Vargas      (Not for Publication)  
v.  
Conte

The portion of the judgment rejecting the jury's verdict on the plaintiff's breach of fiduciary duty claim is reversed and the jury's award of \$45,756 is reinstated. The portion of the judgment awarding additional compensation of \$20,100 to Conte is reversed. In all other respects, the judgment is affirmed. Costs on appeal are awarded to plaintiff Vargas.

Boren, P.J.

We concur:   Nott, J.  
                      Cooper, J.

DIVISION THREE

B131655 Marcia Spielhotz et al. (Certified for Publication)  
v.  
Superior Court, Los Angeles County  
(Los Angeles Cellular Telephone Company, et al., r.p.i.)

Let a peremptory writ of mandate issue directing the superior court to vacate its order granting AT&T's motion to strike and issue a new order denying the motion. The alternative writ of mandate issued on June 8, 2000, is discharged. Petitioners shall recover their costs in this proceedings.

Croskey, J.

We concur: Klein, P.J.  
Kitching, J.

## February 8, 2001-Continued

DIVISION THREE (Continued)

B141108 People (Not for Publication)  
v.  
Javier R.

The order of wardship is affirmed.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                  Fidler, J. (Assigned)

[illegible]

The judgment is affirmed.

Croskey, J.

We concur: Klein, P.J.  
Fidler, J. (Assigned)

[illegible]

The judgment is affirmed.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                  Fidler, J. (Assigned)

February 8, 2001-Continued

### DIVISION THREE (Continued)

[illegible]

The judgment is affirmed.

Croskey, J.

We concur: Klein, P.J.  
Fidler, J. (Assigned)

DIVISION FOUR

Court convened at 9:00 AM.

Present: Vogel (C.S.), P.J., Epstein, J., Hastings, J., Curry, J., Lewin, J. (Assigned) and Jim Guzman, Deputy Clerk.

Each of the following:

B143086 In re Lavender on Habeas Corpus  
B140693 People v. Montes  
B145017 Nathan v. Hanna  
B140349 People v. Contreras  
B140765 People v. Brown  
B140265 Dalia v. Navcom Defense Electronics  
B139120 People v. Scott  
B138587 Lopez v. Beltran

Argument waived, cause submitted.

B137307 People  
v.  
Holmes and Harvey

Merits:

Argued by Carlo Andreani for appellant Harvey and by Rori M. Ridley for respondent. Oral argument waived by appellant Holmes. Cause submitted.

DIVISION FOUR (Continued)

B139396     People  
              v.  
              O'Quinn

Merits:  
Argued by Glen Niemy for appellant and by Lance E. Winters for respondent. Cause submitted.

B141773     Ehret  
              v.  
              Congoleum Corporation

Merits:  
Argued by Stephanie Rae Williams for appellant and by Charlotte E. Costan for respondents. Cause submitted.

B136982     Bowers  
              v.  
              Takowsky

Merits:  
Argued by Jin Lew for appellants and by John J. Reiner for respondent. Cause submitted.

B145442     Briggs  
              v.  
              Superior Court, Los Angeles County  
              (People, r.p.i.)

Merits:  
Argued by John Hamilton Scott for petitioner and by Phyllis C. Asayama for real party in interest. Cause submitted.



DIVISION FOUR (Continued)

B145764 Michael M.  
v.  
Superior Court, Los Angeles County  
(D.C.F.S., r.p.i.)

Merits:

Argued by Gary E. Beeks for petitioner and by David R. Beaudet for real party in interest. Cause submitted.

B130843 Goldsmith  
v.  
Athans

Merits:

Argued by Steven E. Moyer for appellant and by Robert S. Gerstein for respondents. Cause submitted.

B133097 Movessian  
v.  
Bosley Medical Institute

Merits:

Argued by David D. Kadue for appellants and by Nikki Fong for respondent. Cause submitted.

B145029 Howard Gunty Profit Sharing Plan  
v.  
S.C.L.A.  
Greenwood

B145270 Greenwood  
v.  
S.C.L.A.  
Howard Gunty Profit Sharing Plan

Merits:

Argued by Mark S. Levine for petitioner, by Jill Bowers for respondent and by Phillip L. Bosl for real party in interest. Cause submitted.

Court in recess.

DIVISION FOUR (Continued)

Court reconvened at 1:30 PM.

Present: Vogel (C.S.), P.J., Epstein, J., Hastings, J., Curry, J. and Jim Guzman, Deputy Clerk.

B141254     People  
               v.  
               McKnight

Merits:

Argued by Edward J. Haggerty for appellant and by Joseph Lee for respondent. Cause submitted.

B125044     Theus  
               v.  
               USC

Merits:

Argued by Gary R. Carlin for appellant and by David J. Ozeran for respondent. Cause submitted.

B141502     Genis  
               v.  
               Walsh

Merits:

Argued by Darryl W. Genis for appellant and by Neil Gunny for respondents. Cause submitted.

B138654     Godinez  
               v.  
               Godinez

Merits:

Argued by Veronica Godinez for appellant. No appearance by respondent. Cause submitted.

## DIVISION FOUR (Continued)

B132797 Linehan  
v.  
Regents of University of California

Merits:  
Argued by Gary E. Snelson for appellant and by Mark H. Herskovitz and David A. Niddrie for respondents. Cause submitted.

Court adjourned.

B139193      Scott  
v.  
20th Century Insurance Company et al.

Filed order denying petition for rehearing.

DIVISION FIVE

B137310      People      (Certified for Publication)  
v.  
Carlisle

The judgment is reversed.

Turner, P.J.

We concur: Grignon, J.  
Godoy Perez, J.

DIVISION FIVE (Continued)

B136347      Gregorczyk                      (Not for Publication)  
                 v.  
                 Truck Insurance Exchange

The order dismissing the complaint is reversed. Plaintiff, Gerald Gregorczyk, shall be granted leave to file an amended complaint signed by his current counsel and is to recover his costs on appeal from defendant, Truck Insurance Exchange.

Turner, P.J.

We concur:    Armstrong, J.  
                 Godoy Perez, J.

B142717      Los Angeles County, D.C.F.S.      (Not for Publication)  
                 v.  
                 Emile G.  
                 In re Jasmine G.

The judgment is affirmed.

Armstrong, J.

We concur:    Turner, P.J.  
                 Grignon, J.

B126206      Maryjane Zabala                      (Not for Publication)  
                 v.  
                 Daniel Freeman Hospital et al.

The judgment is affirmed. Respondent(s) to recover costs.

Armstrong, J.

We concur:    Turner, P.J.  
                 Godoy Perez, J.

## February 8, 2001-Continued

## DIVISION FIVE (Continued)

B138681 People (Not for Publication)  
v.  
Christopher Demorest and Russell Pence

The judgment of defendant Demorest is affirmed. The judgment of defendant is reversed as to sentence only, and his case is remanded to the trial court for resentencing. In all other respects, the judgment of defendant Pence is affirmed.

Grignon, Acting P.J.

We concur:    Armstrong, J.  
                      Godoy Perez, J.

B141291 People (Not for Publication)  
v.  
Genero Rodriguez, Jr.

The judgment is affirmed.

Grignon, J.

We concur: Turner, P.J.  
Godoy Perez, J.

B140109      Robert Vars                      (Not for Publication)  
v.  
Jerry Freedman

The judgment is affirmed. Respondent(s) to recover costs.

Godoy Perez, J.

We concur: Turner, P.J.  
Armstrong, J.

DIVISION FIVE (Continued)

B133650      Indemnity Insurance Co. of North America      (Not for Publication)  
v.  
Emerson Electric Company

The judgment is affirmed in finding there was a failure to warn. The judgment is reversed, however, in awarding respondent \$181,863 in damages and the matter is remanded to the trial court for a limited retrial to determine what relief, if any, remains available to respondent under the warranty limitations at issue. Appellant to recover its costs on appeal.

Godoy Perez, J.

We concur:   Turner, P.J.  
                  Armstrong, J.

B140978      People      (Not for Publication)  
v.  
Guarardo G.

The judgment is affirmed.

Turner, P.J.

We concur:   Armstrong, J.  
                  Godoy Perez, J.

B137434      People      (Not for Publication)  
v.  
Tullis

The term for the Penal Code section 667.5, subdivision (b) allegation is stricken. The clerk of the superior court is directed to prepare an amended abstract of judgment. The superior court clerk is then to deliver the corrected abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed.

Willhite, J. (Assigned)

We concur:   Turner, P.J.  
                  Grignon, J.

We concur:   Turner, P.J.  
                      Grignon, J.

Grignon, Acting P.J.

We concur:    Armstrong, J.  
                          Godoy Perez, J.

Grignon, J.

We concur:   Turner, P.J.  
                      Armstrong, J.

## February 8, 2001-Continued

## DIVISION FIVE (Continued)

B144212      Los Angeles County, D.C.F.S.      (Not for Publication)  
v.  
Valerie E.  
In re Angel F.

The order terminating parental rights is affirmed.

Willhite, J. (Assigned)

We concur:   Turner, P.J.  
                     Grignon, J.

DIVISION SIX

[illegible]

The trial court is directed to amend the abstract of judgment to reflect a conviction for violation of section 484g. As so modified, the judgment is affirmed.

Perren, J.

We concur:    Gilbert, P.J.  
                              Yegan, J.

B141554 People (Not for Publication)  
v.  
Simmons

The judgment is affirmed.

Perren, J.

We concur: Yegan, Acting P.J.  
Coffee, J.



## February 8, 2001-Continued

## DIVISION SIX (Continued)

B143323      Eade      (Not for Publication)  
v.  
Jackson et al.

The order denying Jackson and Mitchell's motion pursuant to section 424.16 is reversed. Costs are awarded appellants.

Gilbert, P.J.

We concur: Yegan, J.  
Coffee, J.

[illegible]

The judgment is affirmed.

Gilbert, P.J.

We concur: Yegan, J.  
Perren, J.

## DIVISION SIX (Continued)

B140782 People v. Williams (Not for Publication)

The judgment is affirmed.

Gilbert, P.J.

We concur: Coffee, J.  
Perren, J.

## DIVISION SEVEN

B135896      Zuckerman      (Not for Publication)  
v.  
Board of Chiropractic Examiners of The State of California

The part of the judgment denying the petition for writ of administrative mandate as to the cost reimbursement provision of the Board's decision is reversed, and on remand the trial court is directed to grant the petition as to the cost reimbursement provision; in all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal.

Lillie, P.J.

We concur:   Johnson, J.  
                      Neal, J.

B122861      Latto  
v.  
American Golf Corporation

Filed order denying petition for rehearing. (Neal, J. would grant the petition.)